

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 20, 2015

AMENDED IN SENATE MAY 4, 2015

SENATE BILL

No. 251

**Introduced by Senator Roth
(Principal coauthor: Senator Galgiani)
(Coauthors: Senators Anderson and Nielsen)**

February 18, 2015

An act to amend Section 55.32 of, and to add Sections 55.535 and 1938.5 to, the Civil Code, to amend Sections 4459.7, 4459.8, and 8299.06 of, to add Section 65941.6 to, and to add Article 4 (commencing with Section 65946) to Chapter 4.5 of Division 1 of Title 7 of, the Government Code, and to add and repeal Sections 17053.43 and 23643 of the Revenue and Taxation Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as amended, Roth. Civil rights: disability access.

(1) Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires that a demand letter alleging a violation of a construction-related accessibility standard or asserting a construction-related accessibility claim include specified information, and that copies of the demand letter be sent to the California Commission on Disability Access and the State Bar of California.

Existing law repeals the requirement that a copy of a demand letter be sent to the State Bar of California on January 1, 2016.

This bill would extend the above-described January 1, 2016, repeal date, to January 1, 2019.

(2) Existing law requires a certified access specialist (CAsp), upon completion of an inspection of a site, to issue a written inspection report for the site, as specified. Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, that a defendant may file a request for a court stay and early evaluation conference in the proceedings, as specified. Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination.

This bill would provide that a business, prior to the initiation of litigation, receipt of a demand letter, or a business that is otherwise on notice of a violation of a construction-related accessibility standard prior to a CAsp inspection, is not liable for minimum statutory damages for violating a construction-related liability standard if the violation is corrected within 90 days of the date of an inspection by a CAsp. The bill would also provide that a small business is not liable for minimum statutory damages for an alleged violation if the violation concerns interior or exterior signage, the color and condition of parking lot paint striping, or truncated domes and is corrected within 15 days of service of a summons and complaint in a construction-related accessibility claim or receipt of a written notice, whichever is earlier.

(3) Under existing federal law, a landlord and tenant are both responsible for compliance with the federal Americans with Disabilities Act of 1990 and implementing regulations. The parties to a lease agreement may allocate responsibility by the lease or other contract. Existing law requires a commercial property owner or lessor to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property has been inspected by a CAsp and, if so, whether or not the property has been determined to meet all applicable construction-related accessibility standards.

This bill would require a commercial property owner to state on every lease form or rental agreement executed on or after January 1, 2016, that the owner or lessor and the tenant are both responsible for compliance with the *federal* Americans with Disabilities Act of 1990 and that responsibility for compliance may be allocated between the parties by the terms of the lease or other contract.

(4) Existing law requires the State Architect to establish and publicize a program for the voluntary certification by the state of any person who meets specified criteria as a CASp. Existing law requires the State Architect to annually publish a list of CASps. Existing law requires each applicant for CASp certification or renewal to pay certain fees, and requires the State Architect to periodically review those fees, as specified. Existing law provides for the deposit of those fees into the Certified Access Specialist Fund, which is continuously appropriated for use by the State Architect to implement the CASp program.

This bill would additionally require the State Architect to publish, and periodically update, an easily accessible list of businesses which have been inspected by a CASp on or after January 1, 2016, including the date of the inspection. The bill would also require applicants for CASp certification or renewal to additionally provide to the State Architect the name of the city, county, or city and county in which the applicant intends to provide or has provided services, and would require the Division of the State Architect to post that information on its Internet Web site.

(5) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public facilities and facilitating business compliance with applicable state and federal laws and regulations. Existing law sets forth the powers and duties of the commission, including developing educational materials and information for businesses, building owners, tenants, and building officials, posting that information on the commission's Internet Web site, and coordinating with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

This bill would additionally require the commission to provide a link on its Internet Web site to the Internet Web site of the Division of the State Architect's CASp certification program, and make the commission's educational materials and information available to other state agencies and local building departments.

(6) The Planning and Zoning Law establishes procedures for the application, and review of an application, for a development project. Existing law requires a public agency to notify applicants for development permits of specified information, including the time limits established for the review and approval of development permits.

This bill would additionally require local agencies to develop and provide to applicants materials relating to the requirements of the federal Americans with Disabilities ~~Act~~, *Act of 1990*, or to instead provide similar materials developed by the California Commission on Disability Access. The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has complied with that act. The bill would also require local agencies to expedite review of projects for which the applicant provides a copy of a disability access certificate, demonstrates that the project is necessary to address an alleged violation of a construction-related access standard or a violation noted in a CASp report, and, if project plans are necessary for approval, has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards. The bill would declare that these provisions constitute a matter of statewide concern and shall apply to charter cities and charter counties.

By imposing additional duties on local agencies with respect to the receipt and review of applications for development projects, this bill would impose a state-mandated local program.

(7) Existing federal law allows a credit against federal income taxes for eligible small businesses for eligible access expenditures, as those terms are defined, in an amount equal to 50% of eligible access expenditures for a taxable year that exceed \$250 but do not exceed \$10,250. The Personal Income Tax Law and the Corporation Tax Law allow a credit against the taxes imposed by those laws for the amount paid or incurred for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year as do not exceed \$250, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, and before January 1, 2023, allow *to small businesses, as defined*, a credit under both the Personal Income Tax Law and the Corporation Tax Law for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year, as specified.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 55.32 of the Civil Code, as added by
2 Section 5 of Chapter 383 of the Statutes of 2012, is amended to
3 read:

4 55.32. (a) An attorney who provides a demand letter, as defined
5 in subdivision (a) of Section 55.3, shall do all of the following:

6 (1) Include the attorney's State Bar license number in the
7 demand letter.

8 (2) Contemporaneously with providing the demand letter, send
9 a copy of the demand letter to the State Bar of California by
10 facsimile transmission at 1-415-538-2171, or by mail to 180
11 Howard Street, San Francisco, CA, 94105, Attention: Professional
12 Competence.

13 (3) Within five business days of providing the demand letter,
14 send a copy of the demand letter to the California Commission on
15 Disability Access.

16 (b) An attorney who sends or serves a complaint, as defined in
17 subdivision (a) of Section 55.3, shall send a copy of the complaint
18 to the California Commission on Disability Access within five
19 business days of sending or serving the complaint.

20 (c) A violation of paragraph (2) or (3) of subdivision (a) or
21 subdivision (b) shall constitute cause for the imposition of
22 discipline of an attorney where a copy of the complaint or demand
23 letter is not sent to the California Commission on Disability Access
24 within five business days, or a copy of the demand letter is not
25 sent to the State Bar within five business days. In the event the
26 State Bar receives information indicating that an attorney has failed
27 to send a copy of the complaint or demand letter to the California
28 Commission on Disability Access within five business days, the
29 State Bar shall investigate to determine whether paragraph (3) of
30 subdivision (a) or subdivision (b) has been violated.

31 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
32 required to send to the State Bar of California or the California
33 Commission on Disability Access a copy of any subsequent
34 demand letter or amended complaint in the same dispute following
35 the initial demand letter or complaint, unless that subsequent

1 demand letter or amended complaint alleges a new
2 construction-related accessibility claim.

3 (e) A demand letter or complaint sent to the California
4 Commission on Disability Access shall be for the informational
5 purposes of Section 8299.08 of the Government Code. A demand
6 letter received by the State Bar from either the sender or recipient
7 of the demand letter shall be reviewed by the State Bar to determine
8 whether subdivision (b) or (c) of Section 55.31 has been violated.

9 (f) (1) Commencing July 31, 2013, and annually each July 31
10 thereafter, the State Bar shall report to the Legislature and the
11 Chairs of the Senate and Assembly Committees on Judiciary, both
12 of the following with respect to demand letters received by the
13 State Bar:

14 (A) The number of investigations opened to date on a suspected
15 violation of subdivision (b) or (c) of Section 55.31.

16 (B) Whether any disciplinary action resulted from the
17 investigation, and the results of that disciplinary action.

18 (2) A report to be submitted pursuant to this subdivision shall
19 be submitted in compliance with Section 9795 of the Government
20 Code.

21 (g) The California Commission on Disability Access shall
22 review and report on the demand letters and complaints it receives
23 as provided in Section 8299.08 of the Government Code.

24 (h) Paragraphs (2) and (3) of subdivision (a) and subdivision
25 (b) shall not apply to a demand letter or complaint sent or filed by
26 an attorney employed or retained by a qualified legal services
27 project or a qualified support center, as defined in Section 6213
28 of the Business and Professions Code, when acting within the
29 scope of employment in asserting a construction-related
30 accessibility claim. The Legislature finds and declares that qualified
31 legal services projects and support centers are extensively regulated
32 by the State Bar of California, and that there is no evidence of any
33 abusive use of demand letters or complaints by these organizations.
34 The Legislature further finds that, in light of the evidence of the
35 extraordinarily small number of construction-related accessibility
36 cases brought by regulated legal services programs, and given the
37 resources of those programs, exempting regulated legal services
38 programs from the requirements of this section to report to the
39 California Commission on Disability Access will not affect the

1 purpose of the reporting to, and tabulation by, the commission of
2 all other construction-related accessibility claims.

3 (i) This section shall become operative on January 1, 2013.

4 (j) This section shall remain in effect only until January 1, 2019,
5 and as of that date is repealed.

6 SEC. 2. Section 55.32 of the Civil Code, as added by Section
7 6 of Chapter 383 of the Statutes of 2012, is amended to read:

8 55.32. (a) An attorney who provides a demand letter, as defined
9 in subdivision (a) of Section 55.3, shall do all of the following:

10 (1) Include the attorney's State Bar license number in the
11 demand letter.

12 (2) Within five business days of providing the demand letter,
13 send a copy of the demand letter to the California Commission on
14 Disability Access.

15 (b) An attorney who sends or serves a complaint, as defined in
16 subdivision (a) of Section 55.3, shall send a copy of the complaint
17 to the California Commission on Disability Access within five
18 business days of sending or serving the complaint.

19 (c) A violation of paragraph (2) of subdivision (a) or subdivision
20 (b) shall constitute cause for the imposition of discipline of an
21 attorney if a copy of the demand letter or complaint is not sent to
22 the California Commission on Disability Access within five
23 business days. In the event the State Bar receives information
24 indicating that an attorney has failed to send a copy of the demand
25 letter or complaint to the California Commission on Disability
26 Access within five business days, the State Bar shall investigate
27 to determine whether paragraph (2) of subdivision (a) or
28 subdivision (b) has been violated.

29 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
30 required to send to the California Commission on Disability Access
31 a copy of any subsequent demand letter or amended complaint in
32 the same dispute following the initial demand letter or complaint,
33 unless that subsequent demand letter or amended complaint alleges
34 a new construction-related accessibility claim.

35 (e) A demand letter sent to the California Commission on
36 Disability Access shall be for the informational purposes of Section
37 8299.08 of the Government Code. A demand letter received by
38 the State Bar from the recipient of the demand letter shall be
39 reviewed by the State Bar to determine whether subdivision (b)
40 or (c) of Section 55.31 has been violated.

(f) (1) Notwithstanding Section 10231.5 of the Government Code, on or before July 31, 2019, and annually thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31.

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) The California Commission on Disability Access shall review and report on the demand letters and complaints it receives as provided in Section 8299.08 of the Government Code.

(h) The expiration of any ground for discipline of an attorney shall not affect the imposition of discipline for any act prior to the expiration. An act or omission that constituted cause for imposition of discipline of an attorney when committed or omitted prior to January 1, 2019, shall continue to constitute cause for the imposition of discipline of that attorney on and after January 1, 2019.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

1 (j) This section shall become operative on January 1, 2019.

2 SEC. 3. Section 55.535 is added to the Civil Code, immediately
3 following Section 55.53, to read:

4 55.535. (a) A business, prior to the initiation of litigation,
5 receipt of a demand letter, or that is otherwise on notice of a
6 violation of a construction-related accessibility standard prior to
7 a CASp inspection, shall not be liable for minimum statutory
8 damages for violating a construction-related liability standard, as
9 defined in Section 55.52, that is noted in the CASp report if the
10 violation is corrected within 90 days of the date of the CASp
11 inspection.

12 (b) A small business, as that term is defined in subparagraph
13 (B) of paragraph (2) of subdivision (f) of Section 55.56, shall not
14 be liable for minimum statutory damages for violating a
15 construction-related accessibility standard if both of the following
16 conditions are met:

17 (1) The alleged violation concerns interior or exterior signage,
18 the color or condition of parking lot paint striping, or truncated
19 domes.

20 (2) The violation is corrected within 15 days of the service of
21 a summons and complaint asserting a construction-related
22 accessibility claim or receipt of a written notice, whichever is
23 earlier.

24 SEC. 4. Section 1938.5 is added to the Civil Code, to read:

25 1938.5. A commercial property owner or lessor shall state on
26 every lease form or rental agreement executed on or after January
27 1, 2016, that, pursuant to Section 36.201 of Title 28 of the Code
28 of Federal Regulations, the owner or lessor and the tenant are both
29 responsible for compliance with the *federal* Americans with
30 Disabilities Act *of 1990* (42 U.S.C. Sec. 12101 et seq.) and that
31 responsibility for compliance may be allocated between the parties
32 by the terms of the lease or other contract.

33 SEC. 5. Section 4459.7 of the Government Code is amended
34 to read:

35 4459.7. (a) (1) No later than October 31 of each year, the
36 State Architect shall publish and make available to the public ~~both~~
37 a list of certified access specialists who have met the requirements
38 of Section 4459.5.

39 (2) The State Architect shall publish an easily accessible list of
40 businesses which have been inspected by a certified access

1 specialist on or after January 1, 2016, including the date of the
2 inspection. The State Architect shall periodically update this list.

3 (3) The lists required pursuant to this section shall include a
4 written disclaimer of liability as specified in subdivision (b).

5 (b) Notwithstanding any other provision of law, a state agency
6 or employee of a state agency may not be held liable for any injury
7 or damages resulting from any service provided by a certified
8 access specialist whose name appears on the list published pursuant
9 to subdivision (a).

10 (c) The State Architect may perform periodic audits of work
11 performed by a certified access specialist as deemed necessary to
12 ensure the desired standard of performance. A certified access
13 specialist shall provide an authorized representative of the State
14 Architect with complete access, at any reasonable hour of the day,
15 to all technical data, reports, records, photographs, design outlines
16 and plans, and files used in building inspection and plan review,
17 with the exception of proprietary and confidential information.

18 SEC. 6. Section 4459.8 of the Government Code is amended
19 to read:

20 4459.8. (a) The certification authorized by Section 4459.5 is
21 effective for three years from the date of initial certification and
22 expires if not renewed. The State Architect, upon consideration of
23 any factual complaints regarding the work of a certified access
24 specialist or of other relevant information, may suspend
25 certification or deny renewal of certification.

26 (b) (1) The State Architect shall require each applicant for
27 certification as a certified access specialist to do *both of* the
28 following:

29 (A) Pay fees, including an application and course fee and an
30 examination fee, at a level sufficient to meet the costs of application
31 processing, registration, publishing a list, and other activities that
32 are reasonably necessary to implement and administer the certified
33 access specialist program.

34 (B) Provide to the State Architect the name of the city, county,
35 or city and county in which the applicant intends to provide
36 services.

37 (2) The State Architect shall require each applicant for renewal
38 of certification to do *both of* the following:

39 (A) Pay a fee sufficient to cover the reasonable costs of
40 reassessing qualifications of renewal applicants.

1 (B) Provide to the State Architect the name of the city, county,
2 or city and county in which the applicant has provided services
3 since the last day of certification by the State Architect.

4 (3) The State Architect shall periodically review its schedule
5 of fees to ensure that its fees for certification are not excessive
6 while covering the costs to administer the certified access specialist
7 program. The application fee for a California licensed architect,
8 landscape architect, civil engineer, or structural engineer shall not
9 exceed two hundred fifty dollars (\$250).

10 (c) All fees collected pursuant to this section shall be deposited
11 into the Certified Access Specialist Fund, which is hereby created
12 in the State Treasury. Notwithstanding Section 13340, this fund
13 is continuously appropriated without regard to fiscal years for use
14 by the State Architect to implement Sections 4459.5 to 4459.8,
15 inclusive.

16 (d) The State Architect shall post on his or her Internet Web
17 site the name of the city, county, or city and county in which each
18 certified access specialist provides or intends to provide services.

19 SEC. 7. Section 8299.06 of the Government Code is amended
20 to read:

21 8299.06. (a) A priority of the commission shall be the
22 development and dissemination of educational materials and
23 information to promote and facilitate disability access compliance.

24 (b) The commission shall work with other state agencies,
25 including the Division of the State Architect and the Department
26 of Rehabilitation, to develop educational materials and information
27 for use by businesses to understand its obligations to provide
28 disability access and to facilitate compliance with
29 construction-related accessibility standards.

30 (c) The commission shall develop and make available on its
31 Internet Web site, or make available on its Internet Web site if
32 developed by another governmental agency, including Americans
33 with Disabilities Act centers, toolkits or educational modules to
34 assist a California business to understand its obligations under the
35 law and to facilitate compliance with respect to the top 10 alleged
36 construction-related violations, by type, as specified in subdivision
37 (a) of Section 8299.08. Upon completion of this requirement, the
38 commission shall develop and make available on its Internet Web
39 site, or work with another agency to develop, other toolkits or
40 educational modules that would educate businesses of the

1 accessibility requirements and to facilitate compliance with that
2 requirement.

3 (d) The commission shall post the following on its Internet Web
4 site:

5 (1) Educational materials and information that will assist
6 building owners, tenants, building officials, and building inspectors
7 to understand the disability accessibility requirements and to
8 facilitate compliance with disability access laws. The commission
9 shall at least annually review the educational materials and
10 information on disability access requirements and compliance
11 available on the Internet Web site of other local, state, or federal
12 agencies, including Americans with Disabilities Act centers, to
13 augment the educational materials and information developed by
14 the commission.

15 (2) A link to the Internet Web site of the Division of the State
16 Architect's certified access specialist (CASP) program to assist
17 building owners and tenants in locating or hiring a CASp.

18 (e) The commission shall, to the extent feasible, coordinate with
19 other state agencies and local building departments to ensure that
20 information provided to the public on disability access requirements
21 is uniform and complete, and make its educational materials and
22 information available to those agencies and departments.

23 SEC. 8. Section 65941.6 is added to the Government Code, to
24 read:

25 65941.6. (a) Each local agency shall develop materials relating
26 to the requirements of the *federal* Americans with Disabilities Act
27 of 1990 (42 U.S.C. Sec. 12101 et seq.). The local agency shall
28 provide these materials to an applicant along with notice that
29 approval of a permit does not signify that the applicant has
30 complied with the *federal* Americans with Disabilities ~~Act~~. *Act of*
31 1990.

32 (b) For the purposes of complying with the requirements of
33 subdivision (a), a local agency may, in lieu of developing its own
34 materials, provide applicants with those materials which the
35 California Commission on Disability Access has developed and
36 made available pursuant to Section 8299.06.

37 SEC. 9. Article 4 (commencing with Section 65946) is added
38 to Chapter 4.5 of Division 1 of Title 7 of the Government Code,
39 to read:

Article 4. Expedited Review

65946. (a) For the purposes of this section, the following definitions shall apply:

(1) “Certified access specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5.

(2) “Construction-related accessibility standard” means a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of the Civil Code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).

(3) “Written inspection report” means the CASp report required to be provided pursuant to subdivision (a) of Section 55.53 of the Civil Code.

(b) A local agency shall expedite review of a project application if the project applicant meets all of the following conditions:

(1) The applicant provides a copy of a disability access inspection certificate, provided by a CASp pursuant to subdivision (e) of Section 55.53 of the Civil Code, pertaining to the site of the proposed project.

(2) The applicant demonstrates that the proposed project is necessary to address either an alleged violation of a construction-related accessibility standard or a violation noted in a written inspection report.

(3) If project plans are necessary for the approval of a project, the applicant has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards.

SEC. 10. Section 17053.43 is added to the Revenue and Taxation Code, to read:

17053.43. (a) (1) For each taxable year beginning on or after January 1, 2016, and before January 1, 2023, there shall be allowed to a taxpayer *that is a small business* a credit against the “net tax,”

1 as defined in Section 17039, for the amount paid or incurred for
2 eligible access expenditures in excess of two hundred fifty dollars
3 (\$250).

4 (2) (A) ~~Except as specified in subparagraph (B), the~~ *The* credit
5 shall be in an amount equal to 50 percent of the difference between
6 the total eligible access expenditures incurred by a taxpayer *that*
7 *is a small business* that do not exceed ten thousand two hundred
8 fifty dollars (\$10,250) and two hundred fifty dollars (\$250).

9 ~~(B) For a taxpayer that is a small business, the credit shall be~~
10 ~~in an amount equal to 50 percent of the difference between the~~
11 ~~total eligible access expenditures incurred by a taxpayer that do~~
12 ~~not exceed fifteen thousand two hundred fifty dollars (\$15,250)~~
13 ~~and two hundred fifty dollars (\$250).~~

14 ~~(C)~~

15 (B) In the case of a partnership, the limitation under this
16 paragraph shall apply with respect to the partnership and each
17 partner. A similar rule shall apply in the case of an “S” corporation.

18 (b) For the purposes of this section, the following definitions
19 shall apply:

20 (1) “Eligible access expenditures” has the same meaning as
21 defined in Section 44(c) of the Internal Revenue ~~Code~~ *Code*, except
22 that the amounts may be paid or incurred by a taxpayer other than
23 an eligible small business.

24 (2) (A) “Small business” means a trade or business that, in the
25 three immediately preceding taxable years, had average gross
26 receipts, less returns and allowances reportable to this state, of less
27 than three million five hundred thousand dollars (\$3,500,000) and
28 employed 25 or fewer full-time employees.

29 (B) For the purposes of this paragraph, “gross receipts, less
30 returns and allowances reportable to this state” means the sum of
31 the gross receipts from the production of business income, as
32 defined in subdivision (a) of Section 25120, and the gross receipts
33 from the production of nonbusiness income, as defined in
34 subdivision (d) of Section 25120.

35 (C) For the purposes of this paragraph, “full-time employee”
36 means an employee of the taxpayer who works at least 30 hours
37 per week.

38 (c) In the case where the credit allowed by this section exceeds
39 the “net tax,” the excess may be carried over to reduce the “net

1 tax” in the following year, and the succeeding six years, if
2 necessary, until the credit is exhausted.

3 (d) The credit allowed by this section may be claimed only on
4 a timely filed original return of the taxpayer.

5 (e) In the case of a credit allowed under this section, the
6 following shall apply:

7 (1) A deduction or credit shall not be allowed for that amount
8 under any other provision of this part.

9 (2) An increase in the adjusted basis of any property shall not
10 result from that amount.

11 (f) The Franchise Tax Board may prescribe rules, guidelines,
12 or procedures necessary or appropriate to carry out the purposes
13 of this section, including any guidelines regarding the
14 substantiation of the credit allowed by this section. Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code does not apply to any rule, guideline,
17 or procedure prescribed by the Franchise Tax Board pursuant to
18 this section.

19 (g) This section shall remain in effect only until December 1,
20 2023, and as of that date is repealed.

21 SEC. 11. Section 23643 is added to the Revenue and Taxation
22 Code, to read:

23 23643. (a) (1) For each taxable year beginning on or after
24 January 1, 2016, and before January 1, 2023, there shall be allowed
25 ~~a credit~~ to a taxpayer *that is a small business* a credit against the
26 “tax,” as defined in Section 23036, for the amount paid or incurred
27 for eligible access expenditures in excess of two hundred fifty
28 dollars (\$250).

29 (2) (A) ~~Except as specified in subparagraph (B), the~~ The credit
30 shall be in an amount equal to 50 percent of the difference between
31 the total eligible access expenditures incurred by a taxpayer *that*
32 *is a small business* that do not exceed ten thousand two hundred
33 fifty dollars (\$10,250) and two hundred fifty dollars (\$250).

34 ~~(B) For a taxpayer that is a small business, the credit shall be~~
35 ~~in an amount equal to 50 percent of the difference between the~~
36 ~~total eligible access expenditures incurred by a taxpayer that do~~
37 ~~not exceed fifteen thousand two hundred fifty dollars (\$15,250)~~
38 ~~and two hundred fifty dollars (\$250).~~

39 ~~(C)~~

(B) In the case of a partnership, the limitation under this paragraph shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an “S” corporation.

(b) For the purposes of this section, the following definitions shall apply:

(1) “Eligible access expenditures” has the same meaning as defined in Section 44(c) of the Internal Revenue ~~Code~~ *Code*, except that the amounts may be paid or incurred by a taxpayer other than an eligible small business.

(2) (A) “Small business” means a trade or business that, in the three immediately preceding taxable years, had average gross receipts, less returns and allowances reportable to this state, of less than three million five hundred thousand dollars (\$3,500,000) and employed 25 or fewer full-time employees.

(B) For the purposes of this paragraph, “gross receipts, less returns and allowances reportable to this state” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(C) For the purposes of this paragraph, “full-time employee” means an employee of the taxpayer who works at least 30 hours per week.

(D) The dollar amount specified in ~~paragraph~~ *subparagraph* (A) shall apply to the gross receipts of all taxpayers required or authorized to be included on a combined report pursuant to Section 25101 or 25101.15.

(c) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and the succeeding six years, if necessary, until the credit is exhausted.

(d) The credit allowed by this section may be claimed only on a timely filed original return of the taxpayer.

(e) In the case of a credit allowed under this section, the following shall apply:

(1) A deduction or credit shall not be allowed for that amount under any other provision of this part.

(2) An increase in the adjusted basis of any property shall not result from that amount.

1 (f) The Franchise Tax Board may prescribe rules, guidelines,
2 or procedures necessary or appropriate to carry out the purposes
3 of this section, including any guidelines regarding the
4 substantiation of the credit allowed by this section. Chapter 3.5
5 (commencing with Section 11340) of Part 1 of Division 3 of Title
6 2 of the Government Code does not apply to any rule, guideline,
7 or procedure prescribed by the Franchise Tax Board pursuant to
8 this section.

9 (g) This section shall remain in effect only until December 1,
10 2023, and as of that date is repealed.

11 SEC. 12. The Legislature finds and declares that Sections 8
12 and 9 of this act, pertaining to the review and approval of
13 development permit applications, constitute matters of statewide
14 concern, and shall apply to charter cities and charter counties.
15 These sections shall supersede any inconsistent provisions in the
16 charter of any city, county, or city and county.

17 SEC. 13. It is the intent of the Legislature to make the findings
18 required by Section 41 of the Revenue and Taxation Code with
19 respect to the tax credits allowed by Sections 10 and 11 of this act.

20 SEC. 14. If the Commission on State Mandates determines
21 that this act contains costs mandated by the state, reimbursement
22 to local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.